



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE POTENTIALITIES AND SIGNIFICANCE OF THE LEAGUE OF NATIONS COVENANT

KEY PITTMAN

U. S. Senator from Nevada

THE distinguished chairman of this meeting, Dr. Nicholas Murray Butler, in his statement to the effect that, while he hopes that the covenant of the league of nations will be adopted, he would have written a very much different instrument had he been intrusted with the responsibility, suggests to my mind a very pertinent thought. It is but natural that statesmen should differ not only with regard to the expression of an idea, but as to the plan and procedure involving any revolutionary undertaking. Such was the experience of the framers of our Constitution. Benjamin Franklin, near the close of our Constitutional Convention of 1787, read a statement expressing his views with regard to the adoption of the Constitution. He then said, in part—

In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government but what may be a blessing to the people if well administered; . . . I doubt, too, whether any other convention we can obtain may be able to make a better Constitution. For, when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected?

This, undoubtedly, expresses the thoughts of many of the framers of the covenant of the league of nations and of the members of the United States Senate who will be called upon to ratify the treaty that embraces the covenant.

How much more difficult it must have been to bring about a unanimous agreement between the members of the peace conference composed of many different races, speaking different languages, raised in different environments, and trained in different schools of thought. Even in our own Congress, notwithstanding a grave demand and most serious effort to pass a law

for the development of our mineral resources, we have, during a period of four years, found it impossible to draft a bill that would meet with the approval of a sufficient number of United States senators to insure its enactment. It is remarkable that the peace conference was able to draft any covenant that could meet the unanimous approval of that peculiarly constituted body. There can be little doubt that the covenant in its present form is the most definite and reasonable agreement that can be reached.

There are three kinds of leagues of nations that have been under consideration by statesmen throughout the world, and very probably by the peace conference. The plans of these leagues of nations differ chiefly in the power that may be exerted to compel compliance with their covenants. They may be designated as the conservative, the radical, and the compromise plans.

The conservative plan carries with it no power of enforcement other than public sentiment. It means little more than the adoption of our present arbitration treaties by the peace conference. Under this plan, as under our present arbitration treaties, any nation may decline to arbitrate without bringing upon it any punishment by other nations. Under the exceptions and reservations included in all such treaties, for instance, that a nation is not required to arbitrate matters affecting its "honor" or its "vital interests", any nation may find an excuse to avoid the purpose of the treaty. In other words, the matter of arbitration is entirely optional with the contracting parties, and either party to the contract may withdraw under these broad exceptions and reservations. While these treaties have accomplished good and have been the means of settling many disputes of minor consequence, they have no binding effect upon any nation which seeks war and in these cases are not only useless but deceptive.

The radical plan proposes the enforcement of the provisions of the covenant by armaments under the direct control of a league of nations. This plan was favored by many of the French statesmen and probably by the delegates of the French Republic at the peace conference. Under this plan a power would have been created which would have had many of the attributes of government and might have, with much reason, been characterized as a supergovernment.

The compromise plan, while denying the right to the league to raise armies and control and direct armaments, except with unanimous consent of all of the governments, does provide for the enforcement of the terms of the covenant through the combined moral, commercial, and economic forces of the governments that are members of the league. The covenant adopted by the peace conference embodies and exemplifies the compromise plan.

In view of the wide divergence of opinion, is it not wonderful that any compromise plan could have been agreed upon? And is it not dangerous to open up again the whole matter for discussion, reconsideration, and further action by a peace conference? At the time that the covenant of the league of nations was adopted the consciences of nations, chastened by the horrors of war, were ready to make concessions for peace, but as time goes on these sentiments may be supplanted by the ambitions of the victor.

Any amendment by the United States Senate would result in a rejection of the treaty by us and compel the reopening of negotiations, unless the other nations involved should ignore the action of the United States and proceed to ratify the treaty in its present form. In that event we would be isolated from our present allies and forced to make a separate peace with our enemies. The so-called right of amendment of the treaty by the United States Senate is a misnomer. The sole authority of the Senate, under the Constitution, is to advise and consent to the adoption of the treaty.

It may, of course, after rejecting the treaty by amendment, represent to the President of the United States and the other authorized negotiators of treaties that two-thirds of the Senate will approve a treaty in a certain form if entered into by the respective governments. The act of the Senate in adopting amendments would, nevertheless, have the same effect as the direct rejection of the treaty. It must be apparent, not only to United States senators but to all well-informed men and women who have given the matter consideration, that the other nations who have suffered more than we have through this war, and who have joined so sincerely with us in arriving at the present treaty, will hardly tolerate further delay by reason of hypercritical objections to matters which must have been most thoroughly and painfully worked out.

There are, in my opinion, but two questions to be determined by each senator in reaching a conclusion as to whether he will vote for the approval or the rejection of the treaty, namely, first, is the treaty fair and honorable and does it make for peace in the world; second, is it so injurious or dangerous to the vital interests of our country that, notwithstanding the good it may accomplish for peace, he is not justified in approving it?

In discussing the potentialities of the covenant of the league of nations, I will devote my argument principally to its powers with relation to our own sovereignty and governmental policies. I presume that all statesmen agree that concerted action of nations is essential to world peace, and that such action must be supported by effective powers. Of course, I do not assume to commit partisan politicians or those political economists who believe, or argue, that the United States can be isolated from the rest of the world. This theory of national isolation is an ancient Chinese doctrine that has not brought to China the progress and prosperity that we seek for our country.

The conditions existing in the early history of our government might have given some foundation for an argument for national isolation. We did not then possess the power or influence to be a determining factor in international action and intercourse. We were then desperately using every energy of mind and body to establish firmly and maintain a democracy in the midst of world autocracy, and in the presence of the opposition of jealous and fearful rulers of other governments and skeptical, timid, and disloyal residents within our own country.

Revolutionary changes have taken place since those days. The products of our mines, our fields, and our factories have grown beyond the demands of our own people. Our progress and prosperity require that we compete in the markets of the world. We stand as the richest nation on earth. We have advanced and are advancing with greater strides than any other people. Since the World War commenced we have jumped from the position of fourth to that of second place in world shipping. Our citizens are carrying the freedom of their institutions, the energy of their industry, and the skill of their accomplishments to every country where any other free man is permitted to tread. It is our duty to encourage and protect our people in these great undertakings, and this can only be

accomplished through the agreement and concerted action of all civilized nations. The covenant of the league of nations is such an agreement.

The progress, the peace, and the happiness of every nation must inevitably be affected by the conditions existing in other nations. The time has arrived when the intercourse and affairs of nations have become so intimate and intricate, through the remarkable facilities for transportation and communication, that a far greater cooperation is imperative.

We can not escape the effects of the vital actions of other nations. To the mind of the thoughtful man the recent World War has demonstrated this beyond argument. Who, five years ago, would have imagined that the assassination of an Austrian prince, by a lowly Serbian subject of Austria in a remote section of Europe, could involve our country and practically the whole world in the most disastrous war that has ever cursed humanity? Certainly there is no patriotic, intelligent citizen who believes or would argue that we could have avoided being dragged into this war. Then how can we hope to escape future foreign wars that may be nearer to our country? So, apparently being unable to isolate our nation from the effects of foreign wars, it is our sacred duty to do everything in our power to eliminate war.

This beneficent consummation has been sought by our statesmen for many years. They have earnestly attempted through treaties of arbitration to accomplish the determination of rights and the reparation for wrongs through instrumentalities of justice rather than by the force of arms. Numerous treaties have been entered into by us with various nations, and between other nations, providing for the arbitration of disputes that might lead to war. And yet, when this great war was threatened, civilized nations found themselves without authority under any of these treaties to interpose in behalf of the peace of the world. That must never happen again.

Had the covenant of the league of nations been in force in July, 1914, Austria would not have declared war upon Serbia, and the most brutal, un-Christian, and disastrous catastrophe that the world has ever known would have been spared to humanity.

Serbia, after making full reply to the Austrian ultimatum
[377]

and after humbly apologizing and offering every honorable reparation, proposed that—

In case the Austro-Hungarian Government should not consider itself satisfied with the answer, it is ready, as always, to accept a peaceful solution, either by referring the decision of the question to the international tribunal at The Hague or by leaving it to the great powers who cooperated in the preparation of the explanation given by the Serbian Government on the 17th-31st March, 1909.

England, France, and Russia, in the interest of world peace, urged Austria to accept Serbia's proposal. Austria, spurred on by Germany, declined, and the rest of the world was powerless even to defer the impending disaster. This conclusively demonstrated the inefficacy in such cases of all of the efforts of the past and the inefficiency of the peace instrumentalities that had been provided.

Under the provisions of articles 12 and 15 of the covenant of the league of nations Serbia would have proposed to submit the matter to arbitration or to inquiry by the council of the league of nations. Austria would have been compelled to submit either to arbitration under article 13 or an investigation, inquiry, and recommendation by the council or the assembly under article 15, and in any event to desist from "war until three months after the award by the arbitrators or the report by the council." Serbia would undoubtedly then have taken advantage of that part of article 15 which provides:

That they [which would include Austria] will not go to war with any party to the dispute which complies with the recommendations of the report.

Serbia would have complied with any recommendation.

A portion of the penalty provided in article 16 and which would have applied to Austria under article 17 is as follows:

Should any member of the league resort to war in disregard of its covenants under articles 12, 13, or 15 it shall *ipso facto* be deemed to have committed an act of war against all other members of the league, which hereby undertakes immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the league or not.

It shall be the duty of the council in such case to recommend to the several Governments concerned what effective military or naval forces the members of the league shall severally contribute to the armaments of forces to be used to protect the covenants of the league.

Does any one doubt that in such circumstances Germany would have desisted from its instigations and Austria would have refrained from war?

I have taken this concrete case, so fresh in our minds, for the purpose of illustrating my analysis of the potentiality of the covenant of the league of nations in the enforcement of peace. We can not conceive that a more difficult situation threatening the peace of the world could ever arise to test the efficiency of the league.

The covenant of the league of nations chiefly depends for its effectiveness on that portion of article 16 which I have just quoted, and while there may be those who will scout the influence of the combined moral, commercial, and economic forces of nations, students of history recognize that it is rapidly becoming the dominant power for peace and justice on earth. No nation can stand in the face of the public condemnation and ostracism of the world.

But the chief attacks made in the United States upon the covenant of the league of nations are not based upon its lack of power to prevent or defer war, but upon the alleged grant to the league of jurisdiction and power to interfere with the vital interests of our government.

What are the vital interests that we submit to the league of nations under the covenant? There is not contained in the document a single prohibition or limitation upon our right to defend our own territory or our citizens against attack. Our domestic affairs and our Monroe Doctrine are expressly excluded from the jurisdiction of the league. It is granted no control over our Army or our Navy. It is granted no power to fix or determine our armaments, but only the authority to recommend a plan looking to the reduction of armaments in all nations. The adoption or rejection of any proposed plan would be exclusively within the authority of our Congress under the express terms of the covenant. It has no authority other than that expressly conferred upon it by the covenant. It is purely a creature and agent of the contracting govern-

ments. Members of the league are only obligated to submit to arbitration, under article 14, "disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of international obligation, or as to the extent and nature of the reparation to be made for any such breach." There are no other requirements in the covenant as to arbitration. Such action would only involve the adjudication of the terms of a contract or the measure of damages for a proven wrong. Our government has long favored such arbitrations. It is committed to the policy. Beyond these questions there is no provision for compulsory arbitration. Have our people such passion for war that they would refuse to submit such disputes to arbitration when their continued existence threatened us with war and endangered the peace of the world?

If disputes arise that are not subject to arbitration, then the matter shall be submitted under articles 12 and 15 to the league for inquiry, report, and recommendation. What, then, is the result and effect of such submission? If a report is adopted by a unanimous vote, then the recommendations are submitted to the disputants. If both accept, the matter, of course, is settled. If neither accepts the recommendations, then both are free to pursue their own course. If only one of the disputants accepts the recommendations, then the other is only bound to the extent that it shall not go to war.

If our nation in any case were adjudged to be in the wrong it would still have the privilege of breaking off all relations. It would still have the right to treat the opposing nation as unfriendly and visit upon it every power of isolation and ostracism that it could command. And let us keep in mind that this adjudication requires the unanimous vote of every member of the league except the representatives of the disputants. It is true that the matter may be referred to the assembly, but in this case it requires a unanimous vote of the assembly, which, of course, includes the members of the council.

And, again, let it be distinctly remembered that incorporated in the provisions of this article 12, the effects of which I have been analyzing, we find this express exception of jurisdiction and limitation of authority. I quote:

If the dispute between the parties is claimed by one of them, and is found by the council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the council shall so report and shall make no recommendation as to its settlement.

This section was the subject of broad discussion and interpretation at the peace conference by those who will constitute the council and the assembly of the league of nations. The Japanese representatives contended that under the construction of such paragraph governments such as the United States, Canada, and Australia, could continue to cast upon the Japanese race the alleged stigma of inequality by excluding them from their shores under their immigration laws. The peace conference recognized that the question of immigration is a domestic question, and it, therefore, refused to adopt the amendment offered by the Japanese representatives in attempting to change the paragraph in this effect.

We only limit Japanese immigration through a gentleman's agreement with Japan, while Canada and Australia have long had upon their statute books stringent Japanese exclusion acts.

The protection of our domestic jurisdiction is of vital importance to us. So is the protection of the domestic jurisdiction of Canada and Australia equally vital to those countries. It is but natural that every nation should be jealous of its domestic jurisdiction, and in this we find conclusive assurance against interference by the league with matters within the domestic jurisdiction of our own nation. So the maximum restraint upon our sovereignty would be that, upon the unanimous verdict of the world, we would have to refrain from war.

Should we desire to go to war against the unanimous verdict of the world?

Could we hope to win a war against the unanimous disapproval of the world?

Is this so dangerous a covenant that we should be willing to endure militarism rather than submit to it?

Can we conceive of any plan for peaceful settlement of disputes that so little affects our sovereignty?

If we, the leader of democracy, the most ardent advocate of peace, and the bitterest opponents of militarism, are unwilling to submit such international disputes, equally with all other civilized nations, to the unanimous verdict of the world, then, indeed, all is hopeless.

Hardly had these smoke screens, under which pessimistic and hopeless statesmen of the order of national isolation and militarism attacked the covenant of peace, been cleared away by the unalterable construction of the peace conference, before these same statesmen had shifted their attack to the effect of the covenant of the league upon our sacred Monroe Doctrine. They contend that under article 10 of the covenant, which reads as follows :

The members of the league undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the league—

the league has usurped our authority to protect the Republics on the American continent to the south from external aggression against the territorial and existing political independence of those countries. They seem to fail to see—at least, they are unwilling to admit—that such declaration of article 10 is but a confirmation of our Monroe Doctrine with regard to the Republics of the American continent extended and applied to all the nations of the earth. They, with all of the citizens of our country, should have rejoiced that the principles pronounced by President Monroe on behalf of this country as applying to South and Central America, should have been recognized and approved by all the civilized nations of the world.

It was the national militaristic attitude of the world that forced our pronouncement of the Monroe Doctrine. It was the knowledge that under the old order of things conquests by nations of other races and governments were deemed justifiable in aid of national expansion, glory, and power that made the Monroe Doctrine imperative. The Monroe Doctrine was the expression of a high principle and was essential to our protection against existing conditions, but it was a terrible burden that constantly grew more threatening. It was not recognized by other governments until the adoption of the covenant of the league of nations as an international principle or doctrine, and its authority was challenged on more than one occasion by powerful nations. It had no support in the world until reënnunciated and adopted in the covenant of the league of nations, except the power of our own government and the determination of our people to go to war in its defense. But that the suspi-

cions and palsyng fear of these statesmen might be forever allayed, in article 21 of the revised draft of the covenant it is expressly provided that—

Nothing in this covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace.

The purpose in adding this provision in the revised covenant was that there might be no doubt as to the exclusion of the Monroe Doctrine from the effect of the treaty. It is not subject to any other reasonable construction. Yet the distinguished senator from Massachusetts (Mr. Lodge), who is leading the Republican phalanx in the Senate against "advising and consenting" to the treaty with the covenant of the league of nations therein, boldly proclaims that the validity of the Monroe Doctrine is not recognized or protected by such provision. He says that the Monroe Doctrine is not a "regional understanding". What difference does it make what the Monroe Doctrine is when it is expressly excluded from the effect of the treaty by name? The peace conference has seen fit to decide that the Monroe Doctrine is a regional understanding. If Alaska were excluded from the effect of the covenant, it would be immaterial whether it was designated as the "District of Alaska" or the "Territory of Alaska". There might be a difference of opinion as to whether "District" or "Territory" better described the political character of Alaska, but there would still remain no doubt as to what was meant by "Alaska".

And again they contend, with apparent seriousness and intensity of argument, that the words "for securing the maintenance of peace" found at the end of article 21 will enable the league to pass upon whether or not the Monroe doctrine is for "securing the maintenance of peace". In other words, they are attempting to convince the people of the United States that, by reason of such words, the league has the jurisdiction and power to hold that the Monroe Doctrine is not for the purpose of securing the maintenance of peace, and, therefore, is not excluded under article 21 from the effect of the treaty. It is apparent from a most casual reading of the article that the Monroe Doctrine is set up as an example of the kind of regional understandings that will be excluded from the effect of the

treaty. It says plainly and means that other regional understandings for securing the maintenance of peace "like the Monroe Doctrine" shall not be affected by the treaty. The article recognizes that the Monroe Doctrine is for securing the maintenance of peace, and it not only expressly excludes the Monroe Doctrine from the effect of the treaty but all other regional understandings like the Monroe Doctrine. Let the American people read article 21, and I am satisfied that they will consider the arguments of these distinguished senators as an insult to their intelligence and common sense. It exposes the character of argument to which these bitter opponents of the covenant in their desperation are driven and destroys their influence at home and abroad.

While there are still some attacks being made with regard to these provisions, in a heated and demagogic manner, the opponents of broader statesmanship are attacking the covenant upon the fundamental theory that it creates a supergovernment and destroys our nationalism. In support of this contention they quote that portion of article 10, which provides—

In case of any such aggression, or in case of any threat or danger of such aggression, the council shall advise upon the means by which this obligation shall be fulfilled.

And, again, they refer to that paragraph of article 4, which states—

The council may deal at its meetings with any matter within the sphere of action of the league or affecting the peace of the world.

The word "deal" in this case must be synonymous with "consider and recommend". It grants no more authority than the "power to advise" provided in article 10. There is no provision for the enforcement of this advice or their decision with regard to the matters with which they may deal. The only force provided in the entire covenant and agreed upon is the commercial, financial, and moral blockade provided in article 16. The only physical force considered in the covenant is set forth in article 17, as follows:

It shall be the duty of the council in such case to recommend to the several governments concerned what effective military or naval forces the members of the league shall severally contribute to the armaments of forces to be used to protect the covenant of the league.

It does not say recommend to the membership of the league, but "recommend to the several governments". In other words, it was intended, and its effect is, that it remains with the Congress of the United States to accept or reject any such "recommendations". What, then, becomes of the bold, heated, and impassioned declamation of the opponents of the covenant when they ask the mothers of the country if they wish to place in the power of the league of nations the right to send their boys as soldiers to fight in the far corners of the earth? There is no provision in the covenant that can be tortured into such construction. There is no provision in the covenant that grants the league of nations any jurisdiction or control over our Army or our Navy or our soldiers. No vital act may be done by the league of nations without our vote, because it requires a unanimous vote, except as to matters of disputes in which we are involved, and I have shown that as to those matters no action may be taken that could vitally effect the interest of our government.

The supporters of the covenant of the league are ardent in their efforts for a great nationalism, and it is for such reason that they are striving so intensely to maintain the position and influence of the United States among the nations of the world. It would be unfortunate, indeed, if our nationalism were only supported by those few statesmen who arrogate to themselves the only Americanism.

In my opinion, there can be no great nationalism isolated from internationalism. One of the great purposes of the covenant is the establishment and maintenance of nationalism. It is taking small, subservient races and making independent nations of them. It is making a nation of Poland. It is making a nation of Czechoslovakia. It is making a nation of Jugo-Slovenia. And their nationalism shall be sustained through the united action of the old and established nations of the earth under the covenant of the league of nations. And the adoption of these underlying and dominant principles will establish and maintain the national independence of every subservient race.